

PAGE 1

Fares, Inc., Travel Support Center, Inc., Travelation, and Coronado Travel Group, Inc. are named defendants in a civil action brought on December 21, 2007 in the 17th District Court of the State of Texas, Tarrant County, entitled American Airlines, Inc. v. Biztraveldeals.com d/b/a Cheapoair.com, Shailesh "Sam" Jain, Fareportal, Inc., Travelong, Inc., Travelfocus, L.L.C., XTS Corporation, Ultimatefares.com, and Travel Support Center, Inc. d/b/a Travelation, f/k/a Coronado Travel Group, Inc, Cause No. 017-227960-07.

2. All state court papers filed in this action are attached and indexed as required by Local Rule 81.1. The consent of all defendants who have been served with process is filed herein.

II.

3. The citation and petition in this action were served on FarePortal, Inc by serving the Secretary of State for the State of Texas on January 2, 2008. The citation and petition were forwarded to defendant on January 10, 2008 and a return receipt is dated January 15, 2008.

4. The citation and petition in this action were served on TravelFocus, L.L.C. on January 3, 2008 at 400 S. Houston Street, Suite 105, Dallas, Texas 75202.

5. The citation and petition in this action were served on XTS Corporation on January 9, 2008 at 400 S. Houston Street, Suite 105, Dallas, Texas 75202.

6. The citation and petition in this action were served on Travel Support Center, Inc. by serving the Secretary of State for the State of Texas on January 2, 2008. The citation and petition were forwarded to defendant on January 10, 2008 and a return receipt is dated January 14, 2008.

7. The citation and petition in this action were served on Shailesh "Sam" Jain by serving the Secretary of State for the State of Texas on January 2, 2008. The citation and petition were forwarded to defendant on January 10, 2008 and a return receipt is dated January 15, 2008.

8. Service has not been completed on defendant Ultimate Fares, Inc.

9. This notice of removal is filed within 30 days of receipt of the petition and is timely filed under 28 U.S.C. § 1446(b).

III.

10. Defendants petition to remove this action showing that the district courts of the United States have original jurisdiction over this action because the claim arises under federal law in that the cause of action is created by federal law. Jurisdiction in this court is proper pursuant to 28 U.S.C. §§1331, 1338, and 1441(b). 28 U.S.C. §1331 gives district courts original jurisdiction over all matters arising under the laws of the United States, such as the Copyright Act, 17 U.S.C. §101, et. seq. 28 U.S.C. §1338(a) gives federal district courts original and exclusive jurisdiction over civil actions arising under

any Act of Congress relating to copyrights. The Court has supplemental jurisdiction over remaining claims pursuant to 28 U.S.C. §1367.

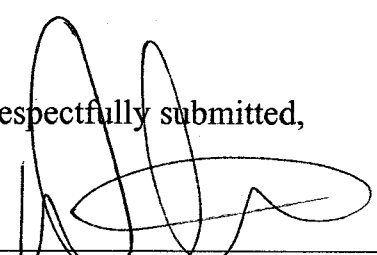
11. 28 U.S.C. §1441(c) permits removal of any civil action over which the federal district court has original jurisdiction, because a separate and independent claim or cause of action arose under the laws of the United States, such as the Copyright Act. This court has original and exclusive jurisdiction over this case because it is a civil action arising under an Act of Congress relating to copyrights and plaintiff's claims are preempted pursuant to 17 U.S.C. §301(a).

IV.

12. Removal of this action is proper pursuant to 28 U.S.C. § 1441. This case is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331 and § 1338.

WHEREFORE, Fareportal, Inc., Travelong, Inc., pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. § 1446, and the Local Rules of this Court, remove this action for trial from the 17th Judicial District of Texas, Tarrant Count, to this Court, on this 1st day of February 2008.

Respectfully submitted,



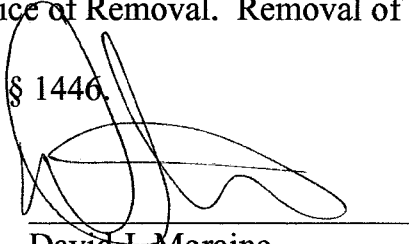
David J. Moraine
State Bar No. 00795830
Victoria M. Rossi
State Bar No. 24053697

MARCHAND & MORaine, L.L.P.
Ten Thousand North Central Expressway
Tenth Floor, Suite 1043
Dallas, Texas 75231
Telephone: 214-378-1043
Facsimile: 214-378-6399

**Attorneys for Fareportal, Inc. and
Travelong, Inc.**

CERTIFICATE OF NOTICE OF FILING

The undersigned, attorney of record for FarePortal, Inc., and Travelong, Inc., certifies that on February 1, 2008 a copy of the Notice of Removal of this action was filed with the clerk of the District Court of Tarrant County, Texas, and that written notice of filing of the Notice of Removal was mailed to the attorneys of record for Plaintiff. Attached to the notices were copies of the Notice of Removal. Removal of this action is effective as of that date, pursuant to 28 U.S.C. § 1446.



David J. Moraine

AMERICAN AIRLINES, INC

V.

BIZTRAVELDEALS.COM d/b/a
CHEAPOAIR.COM, SHAILESH "SAM"
JAIN, FAREPORTAL, INC.,
TRAVELONG, INC., TRAVELFOCUS,
L.L.C., XTS CORPORATION,
ULTIMATEFARES.COM, and TRAVEL
SUPPORT CENTER, INC. d/b/a
TRAVELATION, f/k/a CORONADO
TRAVEL GROUP, INC.

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CAUSE NO.

In accordance with the provisions of 28 U.S.C § 1446, XTS Corporation d/b/a TravelFocus, a named defendant in this action, hereby consents to the removal of this action from the 17th Judicial District of Tarrant County, Texas to this Federal Court.

Party or Counsel of Record

Date \_\_\_\_\_

Party or Counsel of Record

  
\_\_\_\_\_  
ERIC N. WHITNEY

$$\frac{1}{3.1} \approx 0.32$$













|     |                                                               |         |
|-----|---------------------------------------------------------------|---------|
| 12. | Rule 11 Agreement – Patton Boggs LLP and Dee Kelly            | 1/31/08 |
| 13. | Special Appearance of Shailesh “Sam” Jain                     | 2/1/08  |
| 14. | Travelong, Inc.’s Answer to Plaintiff’s Original Petition     | 2/1/08  |
| 15. | Fareportal, Inc.’s Answer to Plaintiff’s Original Petition    | 2/1/08  |
| 16. | Shailesh “Sam” Jain’s Answer to Plaintiff’s Original Petition | 2/1/08  |



# Civil Docket

Discovery: 3

017-227960-07

Cause Of Action: CONTRACT

## NAMES OF PARTIES

## ATTORNEYS

Date Filed  
12/21/2007

AMERICAN AIRLINES, INC.

KELLY, DEE J, JR  
201 MAIN ST STE 2500

Jury  
Fee \$

vs.

FORT WORTH, TX 76102  
BarID: 112117250TX Ph (817)332-2500 PLTF  
KELLY HART & HALLMAN LLP

Paid  
By

BIZTRAVELDEALS.COM, ET AL

Date of Orders

ORDERS OF COURT

Was Steno Used?

017-227960-07

2



**KELLY HART & HALLMAN LLP**

201 MAIN STREET, SUITE 2500  
FORT WORTH, TEXAS 76102

Telephone: (817) 332-2500  
Telecopy: (817) 878-9280  
Writer's Direct Dial: (817) 878-3533  
Email Address: dee.kelly.2@khh.com

301 Congress, Suite 2000  
Austin, Texas 78701  
1000 Louisiana, Suite 4700  
Houston, Texas 77002

December 21, 2007

**VIA HAND DELIVERY**

**017 22796 0 07**

Mr. Thomas Wilder  
Tarrant County District Clerk  
401 West Balknap, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76196

Re: *American Airlines, Inc. v. BizTravelDeals.com d/b/a CheapoAir.com, Shailesh "Sam" Jain, Fareportal, Inc., Travelong, Inc., TravelFocus, L.L.C., XTS Corporation, Ultimatefares.com, and Travel Support Center, Inc. d/b/a Travelation, f/k/a Coronado Travel Group, Inc.*

Dear Mr. Wilder:

Enclosed for filing are the original and 16 copies of Plaintiff's Original Petition. Please file the original petition and issue eight (8) Citations to defendants (six to be served through the Texas Secretary of State and two for private process). This firm's check in the amount of \$227.00 is enclosed in payment of the filing and issuance of citation fees.

This firm wishes to have TravelFocus, L.L.C. and XTS Corporation d/b/a TravelFocus served with process by an approved private process server. The firm will arrange for service of the six (6) remaining Citations through the Secretary of State. Please call once all eight Citations have been prepared and I will have them picked up.

Thank you for your attention to this request. Please give me a call if you have any questions.

Sincerely yours,

  
Dee J. Kelly, Jr.

Enclosures  
DJK2/kdp

FILED  
TARRANT COUNTY  
2007 DEC 21 AM 10:49  
THOMAS A. WILDER  
DISTRICT CLERK

3

No. **017 22796 0 07**

AMERICAN AIRLINES, INC.

v.

BIZTRAVELDEALS.COM d/b/a  
CHEAPOAIR.COM, SHAILESH "SAM"  
JAIN, FAREPORTAL, INC.,  
TRAVELONG, INC., TRAVELFOCUS,  
L.L.C., XTS CORPORATION,  
ULTIMATEFARES.COM, and TRAVEL  
SUPPORT CENTER, INC. d/b/a  
TRAVELATION, f/k/a CORONADO  
TRAVEL GROUP, INC.

IN THE JUDICIAL DISTRICT OF

TARRANT COUNTY, TEXAS

JUDICIAL DISTRICT

FILED  
TARRANT COUNTY  
DEC 21 AM 10:49  
THOMAS A. WILDER  
DISTRICT CLERK

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff American Airlines, Inc., through its attorneys, brings this action against defendants BizTravelDeals.com d/b/a CheapoAir.com, Shailesh "Sam" Jain, Fareportal, Inc., Travelong, Inc., TravelFocus, L.L.C., XTS Corporation, Ultimatefares.com, and Travel Support Center, Inc. d/b/a Travelation, f/k/a Coronado Travel Group, Inc., for injunctive relief and damages. Based upon actual knowledge with respect to itself and its own acts, and upon information and belief as to all other persons and matters, American respectfully alleges as follows:

**Discovery Level**

1. Based on the relief sought, discovery should be conducted under a Level 3 plan pursuant to Texas Rule of Civil Procedure 190.4.

**Nature of the Action**

2. This is a suit to stop wrongful conduct by online profiteers that undermine American's fare distribution system. American seeks to stop the defendants' improper access,

use, and redistribution of American's valuable online fare, scheduling, route, and availability data, all for their own profit. Defendants through a variety of activities manipulate American's distribution system and undermine American's investment in various low-cost online distribution channels. American has no choice but to seek relief from this Court to protect its business from this unauthorized conduct.

#### **Parties**

3. American is a Delaware corporation with its headquarters in this County, at 4333 Amon Carter Boulevard, Fort Worth, Texas 76155.

4. Defendant BizTravelDeals.com d/b/a CheapoAir.com ("CheapoAir") is an entity of unknown form that owns and operates and does business through the www.cheapoair.com website ("CheapoAir.com"). CheapoAir's principal place of business is on the Internet and its main offices are located at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001. CheapoAir is a nonresident of the State of Texas that engages in business in the State of Texas, but does not maintain a regular place of business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, CheapoAir may be served with process by serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to CheapoAir's home office at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001.

5. Defendant Fareportal Inc. is a New York corporation that owns and operates the Internet website www.fareportal.com and has its principal place of business at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001. Fareportal Inc. is a nonresident of the State of Texas that engages in business in the State of Texas, but does not maintain a regular place of

business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, Fareportal Inc. may be served with process by serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to Fareportal Inc.'s home office at 213 West 35<sup>th</sup> Street, Suite 1201, New York, New York 10001, Attention: Shailesh "Sam" Jain.

6. Defendant Travelong, Inc. ("Travelong") is a New Jersey corporation with its principal place of business at 225 West 35<sup>th</sup> Street, Suite 1501, New York, New York 10001. Travelong is a nonresident of the State of Texas that engages in business in the State of Texas, but does not maintain a regular place of business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, Travelong may be served with process by serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to Travelong's home office at 225 West 35<sup>th</sup> Street, Suite 1501, New York, New York 10001.

7. Defendant Shailesh "Sam" Jain ("Jain") is an individual of unknown residence believed to be the principal of CheapoAir, Fareportal, and Travelong, and which are also alter egos for Jain. Jain is a nonresident of the State of Texas who engages in business in the State of Texas, but does not maintain a regular place of business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, Jain may be served with process by

serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to Jain's office at the corporate headquarters of CheapoAir and Fareportal, 225 West 35<sup>th</sup> Street, Suite 1501, New York, New York 10001.

8. Defendant TravelFocus, L.L.C. ("TravelFocus") is a Texas limited liability company with its principal place of business at 12655 North Central Expressway, Suite 200, Dallas, Texas 75243. It can be served with process through its registered agent, M. Drew Siegel, 1620 East Belt Line Road, Carrollton, Texas 75006.

9. Defendant XTS Corporation d/b/a TravelFocus ("XTS") is a Texas corporation with its principal place of business at 12655 North Central Expressway, Suite 200, Dallas, Texas 75243. It can be served with process through its registered agent, Richard S. Kumpf, 301 North Market Street, Suite 150, Dallas, Texas 75202.

10. Defendant Travel Support Center, Inc. d/b/a Travelation and Smartfares, f/k/a Coronado Travel Group, Inc. ("Travelation"), is a California corporation with its principal place of business on the Internet through its websites located at [www.travelation.com](http://www.travelation.com) and [www.smartfares.com](http://www.smartfares.com), and its headquarters at 225 Broadway, Suite 1670, San Diego, California 92101. Travelation is a nonresident of the State of Texas that engages in business in the State of Texas, but does not maintain a regular place of business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, Travelation may be served with process by serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or

certified mail, return receipt requested, to Travelation's home office at 225 Broadway, Suite 1670, San Diego, California 92101.

11. Defendant Ultimate Fares Inc. ("Ultimate Fares") is a Nevada corporation with its principal place of business on the Internet at its Ultimatefares.com website, and its headquarters at 1785 East Sahara Avenue, Suite #490, Las Vegas, Nevada 89104. Ultimate Fares is a nonresident of the State of Texas that engages in business in the State of Texas, but does not maintain a regular place of business in the State of Texas and does not have a designated agent for service of process in the State of Texas. Pursuant to §§ 17.044(b) and 17.045 of the Texas Civil Practice and Remedies Code, Ultimate Fares may be served with process by serving Mr. Phil Wilson, the Secretary of State of Texas, State Capitol Room 1E.8, Austin, Texas 78711, who then shall immediately mail a copy of the process by registered mail or certified mail, return receipt requested, to Ultimate Fare's home office at 1785 East Sahara Avenue, Suite #490, Las Vegas, Nevada 89104, Attention: Spiegel & Utrera PA.

#### **Jurisdiction and Venue**

12. This Court has subject matter jurisdiction over this case because the amounts in controversy are within its jurisdictional limits.

13. This Court also has personal jurisdiction over defendants. They are domestic business entities and an individual that committed torts in this State, breached a contract entered into and governed by the laws of this State, and violated Texas statutory law in this State. They systematically did, and still do, conduct business in this State. The injury defendants' conduct inflicts on American is felt in this State, and defendants know that serious harmful effects from their conduct will occur here.

14. Venue in this matter is proper in this County, pursuant to § 15.002 of the Texas Civil Practice and Remedies Code. A substantial part of the activities, events, and damages

giving rise to this lawsuit occurred in this County. In addition, defendants direct their commercial operations to residents of this State and County. Residents of this State and County interact with certain defendants by using their Internet websites to search for fares, or by reserving and purchasing through them and their websites air travel originating from or arriving at airports in this State and County. Defendants base their business on the improper or surreptitious, acquisition, and distribution of the valuable property of Texas-based companies such as American.

### **Facts Giving Rise to This Action**

#### **A. American's Operations**

15. In the decades that Fort Worth-based American has been offering air transportation services under its name and related marks, it has developed substantial goodwill with its customers by establishing itself as a professional company with reliable, high-quality customer service.

16. American has responded to the recent industry-wide financial crisis with an aggressive effort to reduce its costs, including its costs in distributing its fares. In particular, American has sought to grow its low-cost Internet-based means of distributing its fares and serving its customers.

#### **B. American's AA.com Website**

17. In 1995, American introduced its AA.com website to enhance its communications and relationships with customers and to offer an online vehicle for travel planning, frequent flier account management, and the like.

18. Since then, American has invested significant resources into AA.com. It has undertaken extensive upgrades to allow ease of use, greater personalization, more customer service resources, special offers to consumers, and enhanced information security. American



strives to make AA.com a user-friendly website that displays fares quickly, conveniently, and accurately.

19. American has invested substantial time and millions of dollars in developing, marketing, and maintaining both AA.com and its other methods of online fare distribution, all for the purpose of serving consumers. In order to promote AA.com and further develop customer loyalty, American has offered its Lowest Fare Guarantee on AA.com. American guarantees consumers that they will "find the lowest fares available for flights on American Airlines at AA.com." If customers purchase a ticket on AA.com, and then later that day find an American Airlines fare for at least \$5 less for the exact same flight and itinerary on another website, American will refund the difference in fare and give them a \$50 Promotion Code to be used toward a future flight purchase.

**C. American's Distribution of its Fares**

20. American authorizes only certain channels for the distribution of its fare, route, scheduling, and availability data ("fare data"), including its own reservations center, AA.com, and through distribution agreements with global distribution systems and selected online travel agents.

21. In authorizing selected companies to distribute its fares, American examines the quality and reputation of potential distributors to ensure that they conduct themselves in a manner consistent with American's business standards and compatible with the intended use of American's property to service its customers. The distribution of American's fares is predicated on these companies' adherence to rules, practices, and contracts that American has promulgated or negotiated with them.

**D. American's Contractual Relationships with Travel Agents**

22. In distributing its fares, American enters into contractual relationships with travel agencies. The basic agreement that allows a travel agent to serve as American's agent and distribute its fares is the ARC Reporting Agreement, which includes the AA Addendum (collectively the "ARC Agreement"). The ARC Agreement provides that agents will "strictly adhere to American's current instructions, rules, regulations, requirements, conditions of sale or carriage, tariffs, and procedures" in booking reservations or issuing tickets. Failure to comply makes the agent liable for "the cost of the ticket, the difference between the fare paid and the applicable fare, or an administrative service charge, as American deems appropriate, and termination of Agent's appointment." The ARC Agreement also provides that the agent "shall not engage in fraudulent ticket activity."

23. The ARC Agreement expressly recognizes American's ownership of its fare data, stating that the agent "acknowledges that American content and data constitute American's valuable property and that unauthorized distribution or remarketing of American content and data is improper and unlawful."

24. In addition to the ARC Agreement, American enters into additional contracts with some travel agencies that provide incentives for those agencies to book more flights on American. These contracts provide that the agencies' bookings must be legitimate, and agencies are not allowed to "directly or indirectly move bookings or ticket sales to or from any other travel agency, reservation service provider, Internet Travel Site or other booking or sales location or outlet for the purpose of artificially improving [their] performance on American."

**E. Wrongful Conduct of CheapoAir, Fareportal, Travelong, and Jain**

25. CheapoAir, Fareportal, Travelong, and Jain (collectively the "CheapoAir defendants"), acting individually, in concert with each other, and in concert with the TravelFocus